

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter Of)	
Mid-Rivers Telephone Cooperative, Inc. Petition)	
for Declaratory Ruling to Declare Mid-Rivers an)	WC Docket No. 02-78
Incumbent Local Exchange Carrier Pursuant to)	
Section 251(h)(2) of The Act)	

COMMENTS OF JOHN STAURULAKIS, INC.

Pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's ("Commission's" or "FCC's") rules, 47 CFR §§ 1.415, 1.419, John Staurulakis, Inc. ("JSI") hereby files comments before the FCC in response to its Notice of Proposed Rulemaking.¹ As it expressed in its comments filed supporting the petition of Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) seeking to be declared an incumbent local exchange carrier ("ILEC"), JSI continues to support Mid-Rivers' petition.

Mid-Rivers filed its petition pursuant to section 251(h)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §251(h)(2), and section 51.233(b) of the Commission's Rules, 47 CFR §51.223(b). JSI believes Mid-Rivers substantively satisfies the requirements necessary to be declared an incumbent local exchange carrier. JSI will now address certain issues raised by the Commission.

¹ Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring it to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2), Federal Communications Commission, WC Docket No. 02-78, Notice of Proposed Rulemaking, rel. Nov. 15, 2004. (NPRM)

I. Subsequent Regulatory Treatment of Qwest

The Commission has expressed an interest in receiving comments regarding the subsequent regulatory treatment of Qwest. JSI believes the question regarding the treatment of Qwest is not material to the scope of the present proceeding. Mid-Rivers made no recommendation regarding the regulatory treatment of Qwest because no such decision is necessary in the present proceeding. The Communications Act of 1934, as amended, allows for “Treatment of Comparable Carriers as Incumbents.”² Mid-Rivers is seeking comparable treatment of the incumbent; as such, Qwest’s regulatory treatment is not material to this matter. Unless and until Qwest seeks to relinquish its designation, it will remain an incumbent local exchange carrier for purposes of the Act. There is no reason the responsibilities of incumbent local exchange carriers may not be shared by multiple carriers in a study area. Mid-Rivers seeks to accept the responsibilities of an incumbent local exchange carrier for its operations in the Terry exchange. JSI believes there is no reason to deny the petition.

The Commission has raised the possibility of universal service consequences of treating Mid-Rivers as an incumbent in the Terry exchange. Specifically, the Commission seeks to understand the implications of having two incumbent local exchange carriers for current universal service calculations. As JSI has stated in other proceedings, the optimal universal service policy is to have universal service support based on the cost of the specific carrier or carriers in a service area.³ Absent a Commission rule codifying this principle, JSI submits the existence of an incumbent and another carrier treated as an

² 47 U.S.C. § 251(h)(2).

³ Reply Comments of John Staurulakis, Inc., *In the Matter of Federal-State Joint Board on Universal Service*, Federal Communications Commission, CC Docket No. 96-45, December 14, 2004.

incumbent requires simply a weighted average of the “incumbent” carriers’ support levels to determine the per line amount to be distributed to an ordinary competitive carrier who is not treated as an incumbent carrier. This public policy solution is a second-best alternative and it recognizes the added responsibilities the incumbent carriers accept being designated or being treated as an incumbent local exchange carrier.

II. Relevant Area and Substantial Replacement Requirements

For purposes of treating a comparable carrier as an incumbent, an acceptable “relevant area” definition is the service area geography used for eligible telecommunications carrier status. In the present case, the relevant area would be the Qwest exchange area of the Terry exchange. In the Act, Congress did not specify “service area” or “study area” when it described the treatment of comparable carriers an incumbents. If Congress had intended, it could have used these specific terms, as it did in other instances. Instead, Congress uses the phrase “within an area.” For administrative purposes, since universal service issues may become a factor, the “relevant area” definition in this proceeding should be the service area used by the incumbent. By Commission order, Qwest’s service areas are exchange areas – hence the Terry exchange is the relevant area for purposes of applying the statute.

Mid-Rivers is more than just a majority share provider in the relevant area: Mid-Rivers has 93 plus percent of the entire exchange. The market position of Mid-Rivers is

comparable to an incumbent carrier. JSI recommends the Commission adopt its tentative conclusion regarding the comparability of Mid-Rivers to an incumbent carrier.

Based on the same facts, JSI recommends the Commission adopt its tentative conclusion that when a carrier has 93 percent of the subscribers in a relevant area, it should recognize that such carrier has substantially replaced an incumbent carrier.

III. Public Interest, Convenience, and Necessity

The Commission should determine that treatment as incumbents of carriers who are *de facto* in control of the market for telephone exchange is in the public interest. The added responsibilities and duties of an incumbent carrier will help facilitate competition in the marketplace. Duties of interconnection, resale, unbundling and collocation are all duties of an incumbent carrier. Even when a rural exemption exists, these duties enable competition to a far greater degree than if the *de facto* “incumbent” retained CLEC status where there is absolutely no hope of imposing these duties. In this instance, the Commission should welcome any similarly situated carrier desiring to be treated as an incumbent.

The public interest is not tainted in any way by allowing Mid-Rivers to participate as an incumbent local exchange carrier. Concerns about universal service expansion are not founded in this case because there is no evidence suggesting that treating Mid-Rivers

operations in the Terry exchange will significantly – or even measurably – increase the federal universal service fund.

Further, the Federal State Joint Board on Universal Service is in possession of a voluminous record showing overwhelming support for abolition of rule 54.305.⁴ The Commission should refrain from attempting to apply this rule – in need of abandonment – to the current proceeding. The public interest lies in favor of granting the petition of Mid-Rivers.

JSI submits that the record pertaining to Mid-Rivers' Petition clearly demonstrates the public interest in treating Mid-Rivers as an incumbent in the Terry exchange. Issues related to universal service or access charges should be addressed on a case by case basis as the facts dictate.

Respectfully submitted,

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By: /s/ Manny Staurulakis

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⁴ See *In the Matter of Federal-State Joint Board on Universal Service*, Federal Communications Commission, CC Docket No. 96-45.